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**From:** Markham, John W SPL [John.W.Markham@usace.army.mil]  
**Sent:** 2/24/2014 6:19:05 PM  
**To:** Richard Lyons [rl@spcmb.com]; Szijj, Antal J SPL [Antal.J.Szijj@usace.army.mil]; Amato, Paul [Amato.Paul@epa.gov]; Lawhead, David@Wildlife [David.Lawhead@wildlife.ca.gov]  
**Subject:** Santa Paula Creek Mitigation Bank (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: NONE

Richard-

Thank you as well for your participation and feedback.

For future reference, you may request that confidential or sensitive information be distributed only to IRT member agencies.

In this circumstance, the documents supporting your proposed expanded service area would be distributed by Public Notice as an Instrument modification request (minus any financial data), if that is any consolation.

We will discuss your other comments with Corps staff, and provide substantive responses where feasible. Consistency is a top priority. With respect to your statement that there are currently no other MBs or ILFs within the proposed SPCPB expanded service area, we would like to clarify that the Mountains Restoration Trust ILF program's service area includes both the Santa Monica Mountains and the upper Los Angeles River watershed.

Sincerely, John

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-----Original Message-----

From: Richard Lyons [mailto:rl@spcmb.com]  
Sent: Sunday, February 23, 2014 5:15 PM  
To: Szijj, Antal J SPL; Amato, Paul; Lawhead, David@Wildlife; Markham, John W SPL  
Subject: [EXTERNAL] Santa Paula Creek Mitigation Bank

John,

Thank you for the opportunity to speak at your mitigation forum regarding the two modifications that I am proposing to SPCMB's BEI.....

1. Better language describing how my preservation credits can be used to satisfy permits.
2. Territory expansion.

I appreciate your support for these ideas. I wish Dave Lawhead had been available too.

I hope I am wrong, but, it appears that my studies supporting my bid for territory expansion were attached to the mitigation forum email and sent to everyone on that email list, including all of my competitors and their consultants. What this means is that the \$25,000 I spent for these two studies to compare my resources to the neighboring watersheds, will now benefit WRA and Vandermost Consultants (and ultimately, Land Veritas-Petersen Ranch). This is not what I had intended at all.

Tim McGraff of WRA, and consultants at Vandermost, are the very people who have repeatedly called me in the last two years under false pretenses representing themselves as having interested proponents who needed mitigation from my bank, and soaking me for information about my bank and banking in the L.A.

Corps district. Of course, no clients ever materialized, and I have since come to learn, they were scoping for Land Veritas.

Ironically, Veritas is Latin for truth. So much for that.

I do understand the regulatory agencies' need for transparency, but, shouldn't conversations and private research be reserved for the Public Notice period, and not at this early stage when things are tenuous and being worked out between the agencies and bankers?

I certainly have never been invited to join any previous mitigation forum teleconferences where Land Veritas was discussing their sensitive issues, nor have I had any of Land Veritas' materials distributed to me during their process (only in their Public Notice). Seemingly, to date, they have been able to work these out with the agencies in private.

That being said.....

Regarding the language modification I am requesting, it should come as no surprise that I need a refined definition of how my preservation credits can be used by the Corps, as I continue to lose out on mitigation opportunities.

Most recently, Edison, for their large TRTP project, chose to go with PRM mitigation from Petersen Ranch for their waters credits. Ironically again, WRA was the consultant firm for both Edison and Petersen Ranch. Santa Paula Creek is an authorized bank with Corps preference. Again, the Corps didn't enforce the preference they have in their own 2008 mitigation rule. Why did this happen?

One reason is that Edison was discouraged by WRA from using my "preservation credits". Edison never bothered to call me to ask what the ratio would be to use my credits or compare prices. And, the PM at the Corps on this project didn't bother to suggest to Edison the bank preference.

On top of this, I've also come to find recently that CDFW's renewable energy liaison and LA County CDFW staff didn't even know my bank's Santa Clara River watershed territory included L.A. County, therefore didn't suggest using my bank either.

Also, I have heard time and again from potential clients that RWQCB arm has to be twisted to use my bank unless there is an element of restoration involved. Is this also because of my BEI language, or just local regional board's ignorance of banks and my credits? In frustration, I spoke with Bill Orme this past week regarding this issue. He stated plainly that LA District RWQCB should be adhering to the same Compensatory Mitigation Ratio Checklist that the Corps does, RWQCB should have no problem with using my preservation credits alone to satisfy permits, especially since in SoCal any water is rare, and is of great benefit to the environment. I will also be taking this up this week with my IRT members to try and straighten this out with L.B. Nye at RWQCB.

Is Petersen Ranch going to get all the mitigation now? I cannot stay in business if this is the case. I need to be on equal footing, albeit with a higher ratio.

Now, to address my bid for territory expansion, please note that there are no banks or in-lieu fees in the areas I am proposing expansion into, and my bank could be of great benefit there. The resources in neighboring watersheds, as my studies show, are nearly identical. Will Petersen Ranch now be making a bid for this territory too, using my studies?

In addition, Natasha Lohmus, CDFW streambed person whose territory is the Ventura River Watershed, which is my bank's secondary territory, has vowed directly to me, over the phone, to never recommend using my bank (and she hasn't). She states she likes in-lieu fee and doing things the way she always done them in the past, (despite the fact that CDFW doesn't even have an MOU regarding in-lieu fee). She doesn't like the idea of banks. Without her, I have no secondary territory. I have brought this up before to my IRT, and have no way to fight this.....another reason for territory expansion.

Dave Lawhead has suggested to me that CDFW might allow my bank to be used on a 'case by case' basis in other watersheds (which we can take up further when we talk next). Unfortunately, this still leaves me, permittees, and their consultants, in the predicament of asking 'permission' to use my bank every time out. How can I market something so nebulous and inconsistent?

Now, here's something really outrageously funny! The Ojai Valley Land Conservancy just released their Corps in-lieu fee modification bid for territory expansion into Santa Paula Creek (where my bank is

located) stating that there is no current mitigation program there! What? Please.....they know very well my bank is there.

Gentlemen, being the first bank in the area has been a learning curve for all of us. It is hard enough getting proponents and consultants to understand the benefits of mitigation banks when they have never been exposed to one before. Add to this my recent experience of some members of the regulatory agencies still not even knowing my bank exists (or how to use it). I need some help.

I hope you all will see fit to help rectify some of the inequities I have pointed out. Not only do I need these modifications in order to stay in business, I need more dissemination of information to your own regulatory colleagues about the quality and benefits of my preservation credits and how to use them.

Sincerely,

Richard Lyons

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Caveats: NONE